No. 15344

United States
Court of Appeals
for the Ninth Circuit

TSEUNG CHU, Also Known as BOW QUONG CHEW, Also Known as TSEUNG BOW-QUONG CHEW, Also Known as THOMAS BOWQUONG CHEW,

Appellant,

vs.

GORDON L. CORNELL, Acting Officer in Charge of United States Department of Justice, Immigration and Naturalization Service, of Los Angeles, California,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisca, Calif.—1-18-57

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

FRANCIS C. WHELAN,
727 West 7th Street,
Los Angeles 17, California.

For Appellee:

LAUGHLIN E. WATERS,
U. S. Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney, Chief, Civil Division;

JAMES R. DOOLEY,
Assistant U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

In the District Court of the United States in and for the Southern District of California, Central Division

No. 18970-WM

TSEUNG CHU, Also Known as BOW QUONG CHEW; Also Known as TSEUNG BOW-QUONG CHEW, Also Known as THOMAS BOWQUONG CHEW,

Plaintiff,

vs.

GORDON L. CORNELL, Acting Officer in Charge of United States Department of Justice Immigration and Naturalization Service at Los Angeles, California,

Defendant.

COMPLAINT FOR REVIEW OF DEPORTATION ORDER AND FOR DECLARATORY RELIEF AND TO DECLARE DEPORTATION ORDER VOID, AND FOR INJUNCTION RESTRAINING EXECUTION AND ENFORCEMENT OF DEPORTATION ORDER

I.

This is an action of a civil nature brought to review an order dated and filed December 7, 1954, made by H. R. Landon as District Director of Immigration and Naturalization for the District of Los Angeles, California, and the order of John B. Bartos, Special Inquiry Officer, dated December 7, 1954, incorporated in the said order of said District

Director, denying the application of plaintiff herein to terminate the deportation proceedings against plaintiff pending under the Immigration and Nationality Act of 1952 and ordering that plaintiff be deported from the United States on the charges contained in the warrant of arrest in such deportation proceedings, the said order of said District Director being based on the decision of said Special Inquiry Officer dated December 7, 1954, which latter decision [2*] ordered the deportation of plaintiff and denied plaintiff's motion to terminate such deportation proceedings; and this action is one brought also for declaratory relief and for an order of this Court declaring such order of said District Director of Immigration and Naturalization void, and for an injunction restraining the execution of said order of deportation by defendant as acting officer in charge of the United States Department of Justice Immigration and Naturalization Service at Los Angeles, California.

This action arises under and involves the interpretation of the following Acts of Congress:

> Sections 10 and 12 of the Administrative Procedure Act of 1950 (Title 5, USCA, Sections 1009 and 1011, respectively; 60 Stat. 244); Sections 241(a)(1) of the Immigration and Nationality Act of 1952 (66 Stat., Title 8, USCA, Section 1251(a)(1)); and Sections 212 (a)(9) and 212(a)(19) of the Immigration and Nationality Act of 1952 (66 Stat. 182, Title 8,

*Page numbering appearing at foot of page of original Certified Transcript of Record.

USCA, Sections 1182(a)(9) and 1182(a)(19), respectively); and Title 26, USCA, Section 145(b).

Jurisdiction is conferred on this Court by Title 28, USCA, Section 1346, and Title 5, USCA, Section 1109, and Title 28, USCA, Sec. 1651.

III.

That plaintiff is a resident alien of the United States of America who last entered the United States on August 11, 1953, at which time he was admitted into the United States as a returning resident alien; that plaintiff first entered the United States on or about November 9, 1907, and thereafter departed from the United States; that he was readmitted into the United States on or about October 22, 1913, as a treaty merchant under and in accordance with the Treaty of Trade and Commerce between the United States and China.

IV.

That defendant is Acting Officer in Charge of the United States Department of Justice Immigration and Naturalization Service at Los Angeles, [3] California.

V.

That on or about the 28th day of April, 1954, plaintiff was served with a warrant of arrest issued by H. R. Landon, District Director for the United States Department of Justice Immigration and Naturalization Service at Los Angeles, California; that a true and correct copy of said warrant of

arrest is hereto attached, marked "Exhibit A" and by reference made a part hereof with the same force and effect as if said warrant were herein fully set forth; that after the service of said warrant of arrest plaintiff was admitted to bail pending determination of deportability under bond in the amount of $1,000.00; that on or about the 30th day of April, 1954, plaintiff was served with notice of hearing to enable him to show cause why he should not be deported from the United States in conformity with law; that a true and correct copy of said notice of hearing is hereto attached, marked "Exhibit B" and by reference made a part hereof with the same force and effect as if said notice were herein fully set forth; that said notice was signed by Alfred E. Edgar, Jr., for the District Director of the Department of Justice Immigration and Naturalization Service at Los Angeles, California; that said warrant of arrest and said notice of hearing were in File No. A2534235 IB in said Immigration and Naturalization Service files and records.

VI.

That thereafter and on or about the 11th day of May, 1954, a hearing was had before John B. Bartos, Special Inquiry Officer of the Department of Justice Immigration and Naturalization Service at Los Angeles, California, pursuant to the said notice of hearing; and that thereafter and on or about the 25th day of May, 1954, the said Special Inquiry Officer made his order ordering that plaintiff be deported from the United States in the man-

ner provided by law on the charges contained in said warrant of arrest and that the motion of plaintiff to terminate such deportation proceedings be and the same was denied; that thereafter plaintiff made a motion to reopen such deportation [4] proceedings before the said Special Inquiry Officer, and on June 30, 1955, said Special Inquiry Officer ordered that said deportation hearing be reopened; that such reopened proceeding came on for hearing on November 16, 1954, and that thereafter and on or about the 7th day of December, 1954, said Special Inquiry Officer again made an order ordering that plaintiff be deported from the United States in the manner provided by law on the charges contained in the warrant of arrest and that the motion of plaintiff to terminate the proceedings be and the same was denied. That thereupon the said District Director of Immigration and Naturalization at Los Angeles made and filed his order and decision hereinbefore referred to.

VII.

That on or about the 17th day of December, 1954, plaintiff appealed to the Board of Immigration Appeals from the order and decision in the said deportation proceedings dated December 7, 1954; that on the 4th day of February, 1955, plaintiff's appeal came on for hearing and the same was, after argument, submitted to said Board of Immigration Appeals for decision.

VIII.

That on the 3rd day of October, 1955, the Board of Immigration Appeals gave its decision holding

plaintiff deportable upon the charges stated in the warrant of arrest and ordering that plaintiff's appeal from the order of the said Special Inquiry Officer be and the same was dismissed.

IX.

That plaintiff is a resident of the City of Los Angeles and the Southern Judicial District of the State of California. That defendant's official residence is within the Southern Judicial District of the State of California.

X.

That defendant as Acting Officer in Charge of the United States Department of Justice Immigration and Naturalization Service [5] at Los Angeles, California, is the officer of the United States charged by law with and having the official duty to carry out the enforcement of the said order of deportation against plaintiff if said order be valid and enforceable. That insofar as this action is concerned and insofar as the enforcement of said order of deportation is concerned defendant has succeeded to the powers and duties of said H. R. Landon as District Director of Immigration and Naturalization at Los Angeles, California.

XI.

That defendant, acting in his official capacity, threatens to enforce such order of deportation against plaintiff, and that defendant in his official capacity will, unless enjoined by order of this Court

from so doing, enforce such deportation order against plaintiff, and defendant in his official capacity will, unless enjoined by order of this Court from so doing, deport plaintiff from the United States of America. That defendant will enforce such order of deportation and deport plaintiff, unless defendant be enjoined from so doing, during the pendency of these proceedings; and plaintiff is informed and believes and therefore alleges that defendant will attempt to enforce such order of deportation and deport plaintiff unless defendant be enjoined from so doing by a temporary restraining order issued by this Court pending the hearing of a motion by plaintiff for an injunction pendente lite enjoining and restraining defendant from carrying out such order of deportation.

XII.

That the said order of deportation dated December 7, 1954, was and is void and in error, and was and is arbitrary, capricious, and not in accordance with law, and was and is contrary to constitutional right, and was and is in excess of statutory jurisdiction, authority and limitation, and was and is without observance of procedure required by law, and was and is unsupported by substantial or any evidence, and was and is unwarranted by the facts. That the order and [6] decision of said Special Inquiry Officer dated December 7, 1954, referred to in the said order of deportation was and is void and in error, and was and is arbitrary, capricious, and not in accordance with law, and was and is con-

trary to constitutional right, and was and is in excess of statutory jurisdiction, authority and limitation, and was and is without observance of procedure required by law, and was and is unsupported by substantial or any evidence, and was and is unwarranted by the facts.

XIII.

That the said order of deportation, a copy of which is marked "Exhibit C" and hereto attached and by reference made a part hereof, should be declared void by this Court and defendant should be enjoined from enforcing said order of deportation in that and for the reason that said order is based upon an erroneous finding of fact and an erroneous conclusion of law that plaintiff was at the time of his entry into the United States on August 11, 1953, an alien excludable by law, to wit, an alien who had prior to such entry been convicted of a crime involving moral turpitude, and in that and for the reason that the said order is based on an erroneous finding of fact and an erroneous conclusion of law that plaintiff was at the time of his entry into the United States on August 11, 1953, an alien excludable by law, to wit, an alien who had procured a visa or other documentation by fraud or by wilfully misrepresenting a material fact. That the statute which provides for the deportation of aliens excludable at the time of entry is Title 8, USCA, Section 1251(a)(1); that the statute stating that an alien is excludable if he committed prior to entry a crime involving moral tur-

pitude is Title 8, USCA, Section 1182(a)(9); and that the statute stating that an alien is excludable if he procured a visa or other documentation by fraud or by wilful misrepresentation of a material fact prior to entry is Title 8, USCA, Section 1182 (a)(19).

That plaintiff was not convicted of a crime involving moral turpitude prior to his entry into the United States on August 11, 1953, [7] and that the order of deportation should be declared void and the enforcement thereof should be enjoined in that and for the reason that it is based upon an erroneous finding of fact and an erroneous conclusion of law that the conviction of plaintiff prior to his said entry on August 11, 1953, upon his plea of nolo contendere of the crime of wilful attempt to defeat or evade income tax in violation of Title 26, USCA, Section 145(b), was a conviction of a crime involving moral turpitude and that plaintiff had been prior to his said entry on August 11, 1953, convicted of a crime involving moral turpitude. That in fact plaintiff was on March 27, 1944, convicted in the District Court of the United States in and for the Southern District of California upon his plea of nolo contendere of violation of Title 26, USCA, Section 145(b), but that such conviction was not and is not a conviction of a crime involving moral turpitude within the meaning of the Immigration and Nationality Act of 1952. That there is no legal evidence to support the finding and/or conclusion that plaintiff was convicted of a crime in-

volving moral turpitude prior to his said entry on August 11, 1953.

That said order of deportation dated December 7, 1954, is against the law in that the phrase or ground "crime involving moral turpitude" as found in the Immigration and Nationality Act of 1952, insofar as it applies to the crime of wilful attempt to defeat or evade income tax (Title 26, USCA, Section 145(b)) has no sufficiently definite meaning to be a constitutional standard for deportation.

That plaintiff did not procure a visa or other documentation for entry into the United States by fraud or wilful misrepresentation of a material fact prior to his said entry of August 11, 1953, and that the order of deportation should be declared void and the enforcement thereof should be enjoined in that and for the reason that it is based upon an erroneous finding of fact and an erroneous conclusion of law that plaintiff procured a visa for his said entry on August 11, 1953, by fraud and by a wilful misrepresentation of a material fact, [8] and in that said order of deportation is based upon an erroneous finding of fact and an erroneous conclusion of law that the failure of plaintiff to mention in his application for a visa his said conviction of March 27, 1944, was fraud and a wilful misrepresentation of a material fact. Plaintiff alleges that in fact he did not mention said conviction in his application for a visa, but plaintiff further alleges that his failure to mention said conviction was not fraud and was not a wilful misrepre-

sentation of a material fact in that said conviction not being a conviction of a crime involving moral turpitude was not a material fact upon plaintiff's application for a visa, and plaintiff further alleges that inasmuch as said conviction was upon a plea of nolo contendere plaintiff was not required in any event to admit said conviction in his application for a visa; and plaintiff further alleges that his failure to mention said conviction in his said application was in fact unintentional and inadvertent and was not wilfully done; and plaintiff alleges that he did not procure his visa or any other documentation by fraud or by wilful misrepresentation of a material fact; and plaintiff alleges that there is no legal evidence that plaintiff procured a visa or other documentation by fraud or by wilful misrepresentation of a material fact.

XIV.

That said order of deportation of plaintiff was and is against the law and was and is a denial of a fair hearing to plaintiff and an abuse of discretion by the said District Director of Immigration and Naturalization at Los Angeles, California.

That the order and decision of the Special Inquiry Officer dated December 7, 1954, referred to in said order of deportation was and is against the law and was and is a denial of a fair hearing to plaintiff and an abuse of discretion by the said Special Inquiry Officer; that plaintiff is not deportable under the Immigration and Nationality Act of 1952. [9]

XV.

That plaintiff has exhausted his administrative remedies.

XVI.

That plaintiff's rights are and will be in danger unless this Court enjoins defendant from the enforcement of said order of deportation and that plaintiff has no adequate remedy at law. That an injunction herein enjoining and restraining defendant from enforcing said order of deportation pendente lite and permanently should issue and that a restraining order should issue herein enjoining and restraining defendant from enforcing said order of deportation pending the hearing of an application by plaintiff for an injunction pendente lite.

Wherefore, plaintiff prays judgment as follows:

1. That the Court review the said order of deportation hereinbefore mentioned and declare the rights and legal relations of plaintiff and defendant under and by reason of the said order of deportation, and that the Court declare and hold said order of deportation and the order and decision of the Special Inquiry Officer hereinbefore referred to dated December 7, 1954, and each of them, void and of no force and effect;

2. That defendant be enjoined during the pendency of this action and permanently from enforcing and attempting to enforce the said order of deportation dated December 7, 1954, and the said order of said Special Inquiry Officer dated Decem-

ber 7, 1954, referred to in said order of deportation, and from deporting or attempting to deport plaintiff from the United States of America;

3. That pending the hearing of an application by plaintiff for an injunction pendente lite herein defendant be enjoined and restrained from enforcing or attempting to enforce said order of deportation and said order and decision of said Special Inquiry Officer and from deporting or attempting to deport plaintiff from the United States of America.

/s/ FRANCIS C. WHELAN,
Attorney for Plaintiff.

Duly verified. [10]

EXHIBIT A

Warrant

For Arrest of Alien

United States of America
Department of Justice
Immigration and Naturalization Service

No. A 2 534 235

To any officer in the service of the United States Immigration and Naturalization Service:

Whereas, from evidence submitted to me, it appears that the alien, Thomas Bowquong Chew, aka

Tseung Bowquong Chew, aka Chew Bow Quong, aka Chu Tseung, who entered this country at Honolulu, Hawaii, on the 11th day of August, 1953, has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

> Sec. 241(a)(1) of the Immigration and Nationality Act, in that at time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who have been convicted of a crime involving moral turpitude, under Sec. 212(a)(9) of the Act, to wit: Making false and fraudulent income tax returns, in violation of Title 26, United States Code, Sec. 145(b).
>
> Sec. 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who have procured a visa, or other documentation, by fraud, or by wilfully misrepresenting a material fact, under Sec. 212(a)(19) of the Act.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with

law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1954."

The Said Alien May Be Released From Custody Pending Determination of Deportability Under Bond in the Amount of $1,000.00.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 20th day of April, 1954.

H. R. LANDON,
District Director.

w/s [12]

EXHIBIT B

United States Department of Justice
Immigration and Naturalization Service
458 South Spring Street
Los Angeles 13, California

File No. A2 534 235 IB.

Date: April 30, 1954.

Mr. Thomas Bowquong Chew,
4150 So. Figueroa St.,
Los Angeles, California.

Dear Sir:

Pursuant to the warrant of arrest served on April 28, 1954, you are advised to appear in Room 138,

Rowan Building, 458 South Spring Street, Los Angeles, Calif., on Tuesday, May 11, 1954, at 9:00 a.m., for a hearing to enable you to show cause why you should not be deported from the United States in conformity with law.

You are charged with being an alien illegally in the United States and subject to deportation upon the following grounds:

Sec. 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who have been convicted of a crime involving moral turpitude, under Sec. 212(a)(9) of the Act, to wit: Making false and fraudulent income tax returns, in violation of Title 26, United States Code, Sec. 145(b).

Sec. 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry, you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who have procured a visa, or other documentation, by fraud, or by wilfully misrepresenting a material fact, under Sec. 212(a)(19) of the Act.

At the hearing you may be represented by an attorney or other person or organization authorized to practice before the Immigration and Naturalization Service. Such representation shall be without expense to the Government. You should bring to

the hearing any documents which you desire to have considered in connection with the case. If any document is in a foreign language you should bring the original and certified translation thereof.

Very truly yours,

ALFRED E. EDGAR, JR.,
For the District Director.

Copy to: Mr. Boyd H. Reynolds (surety),
257 S. Spring St.,
Los Angeles 12, Calif.

Registered Mail. [13]

EXHIBIT C

United States Department of Justice
Immigration and Naturalization Service
458 South Spring Street
Los Angeles 13, California

Please address reply to
District Director
and refer to this
File No. A2 534 235 (IB)

Registered Mail—
Return Receipt Requested

Dec. 7, 1954.

Mr. Francis C. Whelan,
Attorney at Law,
811 West 7th Street,
Los Angeles 17, California.

Dear Sir:

The application of Chu, Tseung, aka Chew, Bow Quong, aka Tseung Bowquong Chew, aka Thomas Bowquong Chew has been denied for the following reasons:

> See attached copy of decision of the Special Inquiry Officer.

This decision is final unless an appeal is taken to the Board of Immigration Appeals in Washington, D. C., and notice of appeal is filed within 10 days (not including Sundays and holidays) after receipt of this notice.

If an appeal is desired, the Notice of Appeal on Form I-290A, copies of which are enclosed, shall be executed in duplicate and filed with this office, together with a fee of twenty-five dollars ($25). Remittances should be made payable to the "Treasurer of the United States." If residing in the Virgin Islands, remittances should be drawn in favor of the "Commissioner of Finance of the Virgin Islands." If residing in Guam, remittances should be drawn in favor of the "Treasurer, Guam." Do not send coins or postage stamps. A postal, express, or bank money order is preferred. A brief or other written statement in support of your appeal may be submitted with the Notice of Appeal. You may request oral argument before the Board of Immigration Appeals.

Any question which you may have will be answered by the local immigration office nearest your

residence, or at the address shown in the heading of this letter.

Sincerely yours,

H. R. LANDON,
District Director.

Enclosures. [14]

United States Department of Justice
Immigration and Naturalization Service

Dec. 7, 1954.

File No. A2 534 235—Los Angeles.

In Re: Chu, Tseung, a/k/a Chew, Bow Quong, a/k/a Tseung Bowquong Chew, a/k/a Thomas Bowquong Chew.

In Deportation Proceedings

In Behalf of Respondent:
Mr. Francis C. Whelan,
Attorney at Law,
811 West 7th Street,
Los Angeles 17, California.

Charges:
Warrant:
I & N Act—Excludable at time of entry—convicted of crime involving moral turpitude.
I & N Act—Excludable at time of entry—visa procured by fraud or wilfully misrepresenting a material fact.

Lodged: None.

Application: Terminate proceedings.

Detention Status: Released under $1,000.00 bond.

Warrant of Arrest Served: April 28, 1954.

Discussion: The respondent is a 65-year-old married male, a native and citizen of China, who last entered the United States at Honolulu, T. H., on August 11, 1953, and at that time was admitted into the United States as a returning resident alien.

This respondent was accorded a full hearing under the warrant of arrest at Los Angeles, California, on May 11, 1954. On the basis of that hearing a decision was entered by the Special Inquiry Officer on May 25, 1954, ordering the respondent deported from the United States, and in that decision the factors of the case were thoroughly discussed and that discussion is adopted as a part of this decision.

The decision of May 25, 1954, was appropriately served and on June 7, 1954, an appeal was received at the Los Angeles office, dated June 4, 1954, from the above-cited decision. However, prior to the forwarding of the record on appeal, Counsel for the respondent on June 25, 1954, submitted a motion to reopen the proceedings for the purpose of introduring into the record new evidence pertinent to the proceedings. Under date of June 30, 1954, the motion was granted and the hearing ordered reopened, and on November 16, 1954, the reopened hearing was conducted.

At the reopened hearing on November 16, 1954, there was introduced on behalf of the respondent an order of the United States District Court at Los Angeles, California, number 16635-Criminal, correcting a "clerical error" in the judgment entered in the case of this respondent by the United States District Court at Los Angeles, California, on March 27, 1944. [15]

In the judgment entered in the case on March 27, 1944, it was stated:

> "The defendant having been convicted on his plea of nolo contendere of the offenses charged in the indictment in the above-entitled cause, to wit, make false and fraudulent income tax returns as more fully set forth and charged in the counts of the indictment herein, * *"

On June 21, 1954, this part of the judgment was corrected to read:

> "Whereas the defendant having been convicted on his plea of nolo contendere of the offenses charged in the indictment in the above-entitled cause, to wit, wilful attempts to evade and defeat income tax, * *"

The correction in the judgment removes the words—"make false and fraudulent income tax returns,"—as contained in the original judgment, and substituting the words—"wilful attempts to evade and defeat income tax," both judgments referring to the offenses charged in the indictment, and showing that the respondent had been con-

victed on his plea of nolo contendere of those offenses.

It is contended that the corrected judgment removes the element of moral turpitude from the offense for which the respondent was convicted, and raises the further contention that a conviction on a plea of nolo contendere is only sufficient for the purpose of the case and may not be used in any other proceeding.

In the matter of W——, Interim Decision number 587, decided by the Board on May 27, 1954, in an income tax evasion conviction case concerning the plea of nolo contendere it was stated:

> "It is noted in passing that respondent was convicted of violating 28 U.S.C. 145(b) on a plea of nolo contendere. Under the Federal Criminal Procedure rule 11, the right to such a plea is clearly discretionary with the court. A plea of nolo contendere is an admission of guilt or in effect a plea of guilty, but only for the purposes of the case. Such a plea leaves open for review solely the question of the sufficiency of the indictment. Since respondent entered this plea on advice of counsel and with the consent of the court and because this plea is equivalent to an admission of guilt, the plea is definitely final and completely binding upon respondent."

Section 212(a) (9) provides:

> "Except as otherwise provided in this Act, the following classes of aliens shall be ex-

> cluded from admission into the United States: —aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, * * *''

This statute does not prescribe the manner in which the alien must be convicted of the crime, and he is excludable from admission to the United States whether convicted upon his plea of guilty, plea of nolo contendere, or after a plea of not guilty, either by jury or by the court. Therefore, a conviction on a plea of nolo contendere is a conviction on which deportation proceedings may be based, if the crime involves moral turpitude and is pertinent to the proceedings.

Going again to the indictment on which this respondent was convicted on his plea of nolo contendere on March 27, 1944, for violation of Title 26 United States Code, Section 145(b), it is noted that in each count of the indictment the respondent is charged with as means of so wilfully, knowingly, unlawfully and feloniously attempting to evade and defeat said tax, did make under his oath to said Collector of Internal Revenue a false and fraudulent income tax return. The order correcting the judgment of March 27, 1944, corrects the judgment to read that the defendant was convicted of the offenses charged in the indictment, willful attempts to evade and defeat income tax. He was sentenced to pay a fine of $1,000.00 on each of the four counts of the indictment for a total fine of $4,000.00.

In Interim Decision number 587 it was stated:

> "The moral turpitude question then turns on the crucial statutory word 'willfully.' According to Hargrove vs. United States, 67 F. (2d) 820 (C.C.A. 5, 1933), 'willful' in Section 145 (b) means actual knowledge of the existence of the obligation and specific wrongful intent."

The Interim Decision 587 goes on to state:

> "We feel that the courts in passing on Section 145 (b), as well as in other cases like Morissette vs. United States, have determined 'willfully' connotes an evil intent, since it differentiates between conscious or deliberate acts and accidental or unintentional infractions. In addition, Section 145 (b) imposes a duty on the taxpayer to pay the amount he justly owes and failure to do so, through a willful attempt to evade, constitutes unjust enrichment of the taxpayer and an intent to deprive the Government of this tax money."
>
> "Hence, since moral turpitude inheres in the intent the offense defined in 26 U.S.C. 145 (b) is a crime involving moral turpitude."

The corrected judgment in the case making the judgment read that the respondent having been convicted of the offenses charged in the indictment, namely, willful attempts to evade and defeat the income tax, and the offenses in the indictment having been described as making false and fraud-

ulent income tax returns willfully, knowingly, unlawfully and feloniously, it must be found that the respondent was convicted of a crime involving moral turpitude on March 27, 1944, and that he is amenable to deportation under the Immigration and Nationality Act on the first charge contained in the warrant of arrest.

In view of the foregoing, no further discussion regarding the second charge in the warrant of arrest is necessary than that contained in the order of May 25, 1954, and accordingly the respondent is found amenable to deportation under the Immigration and Nationality Act on the second charge contained in the warrant of arrest.

Accordingly, the findings of fact and conclusions of law stated in the decision of May 25, 1954, are adopted as part of this decision and the following order will be entered.

Order: It is ordered that the alien be deported from the United States in the manner provided by law on the charges contained in the warrant of arrest.

It Is Further Ordered that the motion to terminate the proceedings be and the same is hereby denied.

JOHN B. BARTOS,
Special Inquiry Officer.

[Endorsed]: Filed November 4, 1955. [17]

[Title of District Court and Cause.]

ORDER OF TRANSFER PURSUANT TO "LOW-NUMBER" RULE

In compliance with the amended order of the Judges, filed April 23, 1953, as to "Transfer of cases involving like issues of fact or law," the above-numbered cause is hereby transferred to the calendar of Judge Wm. M. Byrne for further proceedings.

————————,19——.

/s/ LEON R. YANKWICH,
Chief United States District Judge.

I consent to the foregoing transfer.

November 12, 1955.

/s/ WM. C. MATHES,
United States District Judge.

I accept the foregoing transfer.

Nov. 14, 1955.

/s/ WM. M. BYRNE,
United States District Judge.

(Reason for transfer: "Low-numbered" Case No.————).

(Another immigration case for review of deportation order, injunction, restraining deportation proceedings.)

[Endorsed]: Filed November 15, 1955. [18]

[Title of District Court and Cause.]

AFFIDAVIT FOR ORDER PERMITTING AMENDMENT OF COMPLAINT

State of California,
County of Los Angeles—ss.

Helen Nesbitt, being first duly sworn, deposes and says:

That she is secretary for Francis C. Whelan, attorney for plaintiff herein; that in typing the complaint of plaintiff in the above-entitled action she, through mistake, typed the name of the defendant as Gordon L. Connell, rather than Gordon L. Cornell; that affiant has checked with the office of the United States Department of Justice Immigration and Nauralization Service at Los Angeles, California, and has ascertained from an employee of such service who answered affiant's telephonic inquiry, that Gordon L. Cornell was in fact the Acting Officer in Charge of such service at Los Angeles [19] on the date of the filing of the complaint herein.

/s/ HELEN NESBITT.

Subscribed and sworn to before me this 18th day of November, 1955.

[Seal] /s/ FRANCIS C. WHELAN,
Notary Public in and for Said County and State.

[Endorsed]: Filed November 21, 1955. [20]

[Title of District Court and Cause.]

ORDER PERMITTING AMENDMENT OF COMPLAINT

This matter coming on for hearing upon the application of plaintiff, appearing by and through his attorney of record, Francis C. Whelan, for an order permitting the amendment of his complaint to show that the true name of the defendant sued herein is Gordon L. Cornell, and for an order permitting said complaint to be physically corrected by changing the word "Connell" in the caption thereof to read "Cornell"; and it appearing that through inadvertence and mistake a typographical error was made in setting forth the name of said defendant in the caption of said complaint, and that Gordon L. Cornell rather than Gordon L. Connell is in fact Acting Officer in Charge of the United States Department of Justice Immigration and Naturaliation Service at Los Angeles, California; and it further appearing that summons has not been served herein and that the [21] defendant has not answered or otherwise appeared herein, and good cause appearing therefor,

It Is Ordered that plaintiff's complaint may be amended to show in the caption thereof that the name of the defendant is Gordon L. Cornell and the Clerk is hereby ordered to physically correct the caption of said complaint to show the name of said defendant as Gordon L. Cornell rather than Gordon L. Connell.

Dated this 18th day of November, 1955.

/s/ WM. M. BYRNE,
United States District Judge.

[Endorsed]: Filed November 21, 1955. [22]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

The defendant above named, by and through the undersigned, in answer to the Complaint on file herein, admits, denies and alleges as follows:

I.

Admits that this action is brought for the purposes described in the first sub-paragraph of Paragraph I, but denies that the action taken by H. R. Landon as District Director of Immigration and Naturalization for the District of Los Angeles, California, on December 7, 1954, constituted an order. Defendant alleges instead that on December 7, 1954, said H. R. Landon, addressed a letter to the attorney representing the plaintiff herein, which letter enclosed and referred to an Order entered by the Special Inquiry Officer. [23]

Neither admits nor denies the allegations contained in the second and third sub-paragraphs of Paragraph I on the ground that said allegations are conclusions of law.

II.

Admits the allegations contained in Paragraphs III, IV, V, VII, VIII, IX, X, and XV.

III.

Admits the allegations contained in Paragraphs VI, except that defendant denies that the District Director of Immigration and Naturalization at Los Angeles made and filed his Order and Decision as alleged in the last sentence of said Paragraph.

IV.

Denies each and every allegation contained in Paragraph XI. Defendant further alleges that at the time the Complaint herein was filed it was the intention of defendant to effect the deportation of plaintiff. However, defendant will take no action to deport plaintiff from the United States of America until the within judicial proceedings are terminated.

V.

Denies each and every allegation contained in Paragraphs XII, XIII, XIV, and XVI.

For a Further, Separate, and First Affirmative Defense to Said Complaint, Defendant Alleges:

I.

The plaintiff has been accorded a full and fair hearing in conformity with law to determine his right to be and remain in the United States. There will be offered in evidence when this matter comes on for hearing a certified record of the Immigration

and Naturalization Service, Department of Justice, relating to the Plaintiff herein, containing the complete record of the deportation proceedings before the Immigration and Naturalization Service. [24]

For a Further, Separate, and Second Affirmative Defense to Said Petition, Defendant Alleges:

I.

The Complaint on file herein fails to state a claim upon which relief can be granted.

Wherefore, defendant prays for a judgment dismissing said Complaint, denying the relief prayed for therein, and for such other relief as to the Court seems just and proper in the premises.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 9, 1955. [25]

[Title of District Court and Cause.]

MINUTES OF THE COURT
Dec. 21, 1955.

Present: Hon. Wm. M. Byrne, District Judge.
Counsel for Plaintiff: No Appearance.
Counsel for Defendant: No Appearance.

Proceedings:

It Is Ordered that cause be placed on the calendar of Jan. 23, 1956, 9:45 a.m., for pretrial and setting for trial.

Counsel notified.

JOHN A. CHILDRESS,
Clerk. [27]

[Title of District Court and Cause.]

ORDER

For Pretrial Hearing: Directing Conference By Counsel: Directing Parties to File Pretrial Memoranda, and Directing Plaintiff to File Pretrial Order

It Is Ordered: That a Pretrial Hearing be had in the above-entitled matter on Monday, January 23, 1956, at the hour of 9:45 a.m., in Courtroom No. 4, before Wm. M. Byrne, Judge, at which hearing the following matters will be considered:

1. The simplification and determination of the issues of law and fact, including a consideration of the authorities relied upon.

2. The necessity or desirability of amending the pleadings.

3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof. So far as practicable, all documents which either side expects to offer in evidence shall be produced for examination at this hearing.

4. Such other matters as may aid in the disposition of the cause.

It Is Further Ordered: That at the earliest convenient date, not later than ten (10) days, prior to said hearing, counsel for the parties meet and confer in order to ascertain what matters may be covered by stipulation, what documents each party proposes to offer in evidence, what may be done to clarify the issues and shorten the actual trial time, and agree upon the contents of the Pretrial Order referred to below.

It Is Further Ordered: That not later than six (6) days prior to said hearing, counsel for each party shall serve upon opposing counsel and file in the Clerk's Office (in duplicate), a memorandum containing a brief statement of facts (story form), a summary of the points of law involved, citing the supporting authorities, and a list of all exhibits to be offered at time of trial. Do not wait for opposing counsel to file memorandum before filing yours.

It Is Further Ordered: That counsel for Plaintiff, after conference with counsel for the Defendant, shall prepare a proposed Pretrial Order (See

Rule 16, F. R. C. P), reciting the agreements reached, and the issues for trial not disposed of by admissions or agreements of counsel. Counsel for the Plaintiff shall obtain signature of approval of counsel for the Defendant, and submit the proposed Order to the Court (in duplicate) at the Pretrial Hearing.

Upon conclusion of the Pretrial Hearing, the Court will sign the Pretrial Order as proposed, or as modified, and set the cause for trial.

WM. M. BYRNE,
United States District Judge.

Note: For the convenience of counsel, the Court has appended forms of Memoranda and Pretrial Order. It is imperative that counsel comply with the time requirements pertaining to conference and filing of documents. If additional time is required to comply with this Order, submit a timely Stipulation signed by all counsel, setting forth the reasons and requesting a continuance to a stated date (a Monday, at 9:45 a.m.).

Copies mailed December 21, 1955. [28]

[Title of District Court and Cause.]

MINUTES OF THE COURT

January 23, 1956

Calendar: Hon. Wm. M. Byrne, District Judge.

Proceedings:

On the Court's own motion, It Is Ordered that the following causes now coming on for pretrial and setting are continued to Jan. 30, 1956, 10 a.m., for the said proceedings:

* * *

18,970-WB Civil—Tseung Chu, etc. vs. Gordon L. Cornell, etc.

Francis C. Whelan for plf.; James R. Dooley, Asst. U. S. Att'y, for def't.

JOHN A CHILDRESS,
Clerk. [29]

[Title of District Court and Cause.]

MINUTES OF THE COURT

January 30, 1956

Calendar: Hon. Wm. M. Byrne, District Judge.

Counsel: No Appearances.

Proceedings:

It Is Ordered that the following cases now coming

on for pretrial and setting for trial are Continued to Feb. 6, 1956, 10 a.m., for the said proceedings.

* * *

18,970-WB Civil—Tseung Chu, etc. vs. Gordon L. Cornell, etc.

JOHN A. CHILDRESS,
Clerk. [30]

[Title of District Court and Cause.]

MINUTES OF THE COURT

February 6, 1956

Present: Hon. Wm. M. Byrne, District Judge.
Counsel for Plaintiff: Francis C. Whelan;
Counsel for Defendant: James R. Dooley, Ass't U. S. Att'y.

Proceedings:

For pretrial and setting for trial.

Attorney Dooley makes a statement that plaintiff does not have pretrial order, and Attorney Whelan makes the same statement.

Court Orders counsel present pretrial order, and that cause is continued to Feb. 16, 1956, 9:45 a.m., for trial.

JOHN A. CHILDRESS,
Clerk. [31]

[Title of District Court and Cause.]

PRETRIAL ORDER

At a conference held under Rule 16 F.R.C.P., by direction of William M. Byrne, Judge, the following admissions and agreements of fact were made by the parties and required no proof:

Agreements of Fact

I.

On April 20, 1954, a Warrant of Arrest was issued by the District Director, Immigration and Naturalization Service, Los Angeles, California, charging that the plaintiff herein was subject to deportation under the following charges:

(1) In that at time of entry he was within one [32] or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who have been convicted of a crime involving moral turpitude, under Sec. 212(a)(9) of the Act, to wit: Making false and fraudulent income tax returns, in violation of Title 26, United States Code, Sec. 145(b);

(2) In that, at the time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who have procured a visa, or other documentation, by fraud or by wilfully misrepresenting a material fact, under Sec. 212(a)(19) of the Act.

II.

Pursuant to the aforementioned Warrant of Arrest, a deportation hearing was held at Los Angeles, California, on May 11, 1954, and at this hearing there was received in evidence and made a part of the record a judgment of the United States District Court for the Southern District of California dated March 27, 1954, wherein the plaintiff was convicted on his plea of nolo contendere of violating Title 26 U. S. C. Sec. 145(b).

III.

On May 25, 1954, the Special Inquiry Officer who presided at the aforementioned deportation hearing rendered his decision ordering that the plaintiff be deported from the United States in the manner provided by law on the charges contained in the warrant of arrest.

IV.

On June 7, 1954, an administrative appeal was taken from the decision of the Special Inquiry Officer mentioned above; however, on June 25, 1954, before said appeal was decided, plaintiff filed a motion to reopen and reconsider before the Special Inquiry Officer who presided at the deportation hearing; and on June 30, 1954, said [33] Special Inquiry Officer ordered that the deportation hearing be reopened for the purpose, inter alia, of receiving new evidence.

V.

On November 16, 1954, a reopened hearing in deportation proceedings was held at Los Angeles,

California, and at this hearing there was received in evidence and made a part of the record an order of the United States District Court for the Southern District of California filed on June 24, 1954, correcting a clerical error and mistake in the above-mentioned judgment of March 27, 1944, and changing the same by correcting the wording "by making false and fraudulent income tax returns" to read "wilful attempts to evade and defeat income tax."

VI.

On December 7, 1954, the Special Inquiry Officer who presided at said reopened deportation hearing rendered his decision, again ordering that the plaintiff be deported from the United States in the manner provided by law on the charge contained in the warrant of arrest.

VII.

On December 17, 1954, an administrative appeal was taken by the plaintiff from the decision of the Special Inquiry Officer of December 7, 1954, and on October 3, 1955, this appeal was dismissed by the Board of Immigration Appeals, Department of Justice.

VIII.

On October 27, 1955, a Warrant of Deportation was issued directing that plaintiff be deported from the United States.

IX.

That plaintiff's complaint may be and the same is amended by interlining after the word "California" on line 8 of page 5 of said complaint the following:

"that defendant did on October 27, 1955, issue a warrant of deportation directing the deportation of plaintiff from the United States." [34]

X.

That a certified copy of the transcript of the deportation proceedings affecting plaintiff herein in the office of the Department of Justice Immigration and Naturalization Service at Los Angeles, California, will be produced by defendant and admitted into evidence at the trial of the above action.

Issues of Fact to Be Tried

None

Issues of Law

I.

Is there reasonable, substantial and probative evidence to support the outstanding order of deportation against the plaintiff?

II.

Were the deportation proceedings relating to the plaintiff fair, in accordance with law, and in accordance with plaintiff's constitutional rights?

III.

Does the offense of wilfully attempting to evade and defeat income tax in violation of 28 U.S.C. Sec. 145(b) constitute a crime involving moral turpitude within the meaning of Section 212(a)(9) of the Immigration and Nationality Act?

IV.

Was the crime of which plaintiff was convicted a crime involving moral turpitude within the meaning of Section 212(a)(9) of the Immigration and Nationality Act?

V.

Must an alien who has been convicted of a crime upon his plea of nolo contendere admit such conviction in his application for an immigration [35] visa?

VI.

Assuming that the crime of which plaintiff was convicted did not involve moral turpitude, was such conviction a material fact which had to be set forth in his application for an immigration visa?

VII.

Does the phrase "crime involving moral turpitude," insofar as it applies to the crime of wilful attempt to defeat or evade income tax have a sufficiently definite meaning to be a constitutional standard for deportation?

The foregoing admissions of fact have been made by the parties in open Court at the pretrial conference; and issues of fact and law being thereupon stated and agreed to, the Court makes this order which shall govern the course of the trial unless modified to prevent manifest injustice.

Dated this 16th day of February, 1956.

/s/ WM. M. BYRNE,
Judge of the United States
District Court.

The foregoing Pretrial Order is hereby approved:

/s/ FRANCIS C. WHELAN,
Attorney for Plaintiff.

LAUGHLIN E. WATERS,
United States Attorney,

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division,

JAMES R. DOOLEY,
Assistant U. S. Attorney,

By /s/ JAMES R. DOOLEY,
Attorneys for Defendant.

Lodged February 14, 1956.

[Endorsed]: Filed February 16, 1956. [36]

[Title of District Court and Cause.]

MINUTES OF THE COURT

February 16, 1956

Present: Hon. Wm. M. Byrne, District Judge.

Counsel for Plaintiff: Francis C. Whelan.

Counsel for Defendant: James R. Dooley, Assistant U. S. Attorney.

Proceedings:

For trial. At 9:55 a.m. court convenes herein, and Court orders trial proceed.

Counsel stipulate that administrative file be received in evidence.

Defendant's Exhibit A is received in evidence.

Defendant rests.

Attorney Whelan argues to the Court for plaintiff.

At 10:55 a.m. court recesses. At 11:10 a.m. court reconvenes hearing, and counsel being present, Court orders trial proceed.

Attorney Whelan resumes argument.

Attorney Dooley argues to the Court in behalf of defendant.

Attorney Whelan argues further to the Court.

Court makes a short statement and takes the matter under submission; counsel to file memoranda 15 x 15, plaintiff to file first.

JOHN A. CHILDRESS,
Clerk. [37]

United States District Court, Southern District of California, Central Division

No. 18970-WB—Civil

TSEUNG CHU, Also Known as BOW QUONG CHEW, Also Known as TSEUNG BOW-QUONG CHEW, Also Known as THOMAS BOWQUONG CHEW,

Plaintiff,

vs.

GORDON L. CORNELL, Acting Officer in Charge of United States Department of Justice Immigration and Naturalization Service at Los Angeles, California,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The above-entitled matter having come on for trial on February 16, 1956, in the above-entitled Court before the Hon. William M. Byrne, Judge presiding, without a jury; the plaintiff being represented by his attorney, Francis C. Whelan, and the defendant being represented by his attorneys, Laughlin E. Waters, United States Attorney; Max F. Deutz and James R. Dooley, Assistant U. S. Attorneys, by James R. Dooley, and counsel for the parties hereto having stipulated that a certified record of deportation proceedings relating to the plaintiff should be received in evidence, and the Court having received the same; and the Court

having heard the arguments of counsel, and having taken the within cause under submission; and the Court having reviewed the aforementioned [38] record of deportation proceedings relating to the plaintiff, and being fully advised in the premises. now makes the following findings of fact and conclusions of law:

Findings of Fact

I.

Plaintiff is an alien, a native of China. He last entered the United States on August 11, 1953, as a returning resident alien upon presentation of a non-quota immigrant visa issued on April 15, 1953, at the American Consulate General at Hong Kong.

II.

On April 20, 1954, a Warrant of Arrest was issued by the District Director, Immigration and Naturalization Service, Los Angeles, California, charging that the plaintiff herein was subject to deportation under the following charges:

(1) In that at time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who have been convicted of a crime involving moral turpitude, under Sec. 212(a)(9) of the Act, to wit: Making false and fraudulent income tax returns, in violation of Title 26, United States Code, Sec. 145(b);

(2) In that, at the time of entry, he was within one or more of the classes of aliens excludable by

the law existing at the time of such entry, to wit, aliens who have procured a visa, or other documentation, by fraud or by wilfully misrepresenting a material fact, under Sec. 212(a)(19) of the Act.

III.

Pursuant to the aforementioned Warrant of Arrest, a deportation hearing was held at Los Angeles, California, on May [39] 11, 1954, and at this hearing there was received in evidence and made a part of the record a judgment of the United States District Court for the Southern District of California dated March 27, 1944, wherein the plaintiff was convicted on his plea of nolo contendere of violating Title 26, U.S.C., Sec. 145(b).

IV.

On May 25, 1954, the Special Inquiry Officer who presided at the aforementioned deportation hearing rendered his decision ordering that the plaintiff be deported from the United States in the manner provided by law on the charges contained in the warrant of arrest.

V.

On June 7, 1954, an administrative appeal was taken from the decision of the Special Inquiry Officer mentioned above; however, on June 25, 1954, before said appeal was decided, plaintiff filed a motion to reopen and reconsider before the Special Inquiry Officer who presided at the deportation hearing; and on June 20, 1954, said Special Inquiry Officer ordered that the deportation hearing be re-

opened for the purpose, inter alia, of receiving new evidence.

VI.

On November 16, 1954, a reopened hearing in deportation proceedings was held at Los Angeles, California, and at this hearing there was received in evidence and made a part of the record an order of the United States District Court for the Southern District of California filed on June 24, 1954, correcting a clerical error and mistake in the above-mentioned judgment of March 27, 1944, and changing the same by correcting the wording "by making false and fraudulent income tax returns" to read "wilful attempts to evade and defeat income tax."

VII.

On December 7, 1954, the Special Inquiry Officer who [40] presided at said reopened deportation hearing rendered his decision, again ordering that the plaintiff be deported from the United States in the manner provided by law on the charge contained in the warrant of arrest.

VIII.

On December 17, 1954, an administrative appeal was taken by the plaintiff from the decision of the Special Inquiry Officer of December 7, 1954, and on October 3, 1955, this appeal was dismissed by the Board of Immigration Appeals, Department of Justice. On October 27, 1955, a Warrant of Deportation was issued directing that plaintiff be deported from the United States.

IX.

The Immigration officials who acted in connection with the deportation proceedings relating to plaintiff had jurisdiction and authority to act.

X.

There is reasonable, substantial and probative evidence to support the decision of deportability, the order of deportation, and the warrant of deportation.

XI.

The deportation proceedings relating to plaintiff were fair, were in accordance with law, and in accordance with plaintiff's constitutional rights.

Conclusions of Law

I.

This Court has jurisdiction of the within cause under the provisions of Section 10 of the Act of June 11, 1946 (Administrative Procedure Act), 60 Stat. 243, 5 U.S.C.A. § 1009.

II.

The Immigration officials who acted in connection with [41] the deportation proceedings relating to plaintiff had jurisdiction and authority to act.

III.

There is reasonable, substantial and probative evidence to support the decision of deportability, the order of deportation, and the warrant of deportation outstanding against the plaintiff.

IV.

The deportation proceedings relating to the plaintiff were fair, were in accordance with law, and were in accordance with the plaintiff's constitutional rights.

V.

The crime of which plaintiff was convicted, wilful attempts to evade and defeat income tax in violation of Title 26, U. S. Code, Section 145(b), constitutes a crime involving moral turpitude within the meaning of Section 212(a)(9) of the Immigration and Nationality Act.

VI.

Plaintiff was under a duty to disclose his conviction for violating Title 26, U.S. Code, Section 145(b), in his application for an immigration visa, notwithstanding the fact that such conviction was upon his plea of nolo contendere.

VII.

Plaintiff's conviction for violating Title 26, U.S. Code, Section 145(b), was a material fact which plaintiff was under a duty to disclose in his application for an immigration visa.

VIII.

The phrase "crime involving moral turpitude" has a sufficiently definite meaning to afford a constitutional standard for deportation both on its face and as applied to plaintiff's conviction for violating Title 26, U.S. Code, Section 145(b). [42]

IX.

The order of deportation outstanding against the plaintiff, and the warrant of deportation based thereon, are valid, and the plaintiff is deportable pursuant to said order and warrant.

X.

Judgment should be entered in favor of the defendant and against the plaintiff, denying the relief prayed for in plaintiff's Complaint and awarding to the defendant his costs incurred herein.

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law,

It Is Ordered, Adjudged and Decreed:

1. That judgment is hereby entered in favor of the defendant and against the plaintiff, denying the relief prayed for in plaintiff's Complaint.

2. That the defendant have his costs incurred herein, taxed at $20.00.

Dated: This 11th day of June, 1956.

/s/ WM. M. BYRNE,
U. S. District Judge.

Affidavit of Service by Mail attached.

Lodged May 31, 1956.

[Endorsed]: Filed June 11, 1956.

Docketed and entered June 11, 1956. [43]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Plaintiff Tseung Chu, also known as Bow Quong Chew, also known as Tseung Bowquong Chew, also known as Thomas Bowquong Chew, hereby gives notice to defendant Gordon L. Cornell, Acting Officer in Charge of United States Department of Justice Immigration and Naturalization Service at Los Angeles, California, and to the District Court of the United States for the Southern District of California, Central Division, of plaintiff's appeal to the United States Court of Appeals for the Ninth Circuit from the judgment of the United States District Court for the Southern District of California, Central Division, in the above-entitled action, which judgment was entered and docketed in the above action on June 11, 1956, in the records of said United States District Court.

Dated: August 9, 1956.

/s/ FRANCIS C. WHELAN,
Attorney for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 9, 1956. [45]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL AND DOCKETING APPEAL

This matter coming on for hearing upon the motion of plaintiff, appearing through his attorney of record, Francis C. Whelan, and good cause appearing therefor,

It Is Hereby Ordered that the time for filing the record on appeal in the United States Court of Appeals for the Ninth Circuit from the judgment in the above-entitled action and for docketing the appeal from said judgment in the United States Court of Appeals for the Ninth Circuit may be and is hereby extended to and including the 6th day of November, 1956.

Dated this 17th day of September, 1956.

/s/ WM. M. BYRNE,
United States District Judge.

[Endorsed]: Filed September 17, 1956. [47]

In the District Court of the United States, Southern District of California, Central Division

No. Civ. 18,970-WB

TSEUNG CHU, etc.,

Plaintiff,

vs.

GORDON L. CORNELL, etc.,

Defendant.

Honorable William M. Byrne,
District Judge, Presiding.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

February 16, 1956

Appearances:

For the Plaintiff:
FRANCIS C. WHELAN.

For the Defendant:
JAMES R. DOOLEY,
Assistant U. S. Attorney.

February 16, 1956—9:45 A.M.

The Court: Call the calendar.

The Clerk: Tseung Chu, etc., versus Gordon L. Cornell, for trial.

Mr. Whelan: Ready for the Plaintiff.

Mr. Dooley: Ready for the Defendant, your Honor.

The Court: You may proceed. You don't have the proposed pretrial order, do you?

Mr. Dooley: I left that with your Honor a few days ago.

The Court: The memorandum, I believe.

Mr. Dooley: No, the Order itself was signed by both counsel and I left it with the Clerk.

The Court: I assume you stipulate that the administrative file may be received in evidence?

Mr. Whelan: Yes.

Mr. Dooley: Will the Clerk please mark this document, which purports to be an authenticated copy of the record of Immigation and Naturalization Service relating to the deportation proceedings of Tseung Chu, as Defendant's A for identification?

The Court: I assume you have no evidence to offer, Mr. Whelan, and you rest?

Mr. Whalen: Yes. [1*]

Mr. Dooley: Pursuant to stipulation, Defendant offers this in evidence, your Honor, as Defendant's A.

The Court: It will be received as Defendant's Exhibit A.

Defendant rests?

Mr. Dooley: Defendant rests, your Honor.

The Court: All right. You may proceed with your argument.

(Argument of counsel to the Court.)

The Court: This case involves a question of law. I want to congratulate counsel; you have both filed

***Page numbering appearing at foot of page of original Reporter's Transcript of Record.**

very elaborate briefs, and you have both presented able and skillful argument. I will take the matter under submission and I want to make a study of the story involved. In the meantime, so that you may present and I may have, also, before me at that same time your answers to those matters raised by counsel on the other side, you may file a supplemental memorandum within fifteen days, and the Defendant may have fifteen days thereafter to file a supplemental memorandum. Now, of course, this supplemental memorandum I don't want to be a rehash of the matter you have gone into in your former memoranda, but those matters that you have in mind in replying to the memorandum of counsel and, of course, you may include such matters as you want to even though you mentioned them in oral argument again, if you want to call them to my [2] attention, as they may have slipped my mind. So, you will have fifteen days to file that memoranda and the Defendant will have fifteen thereafter within which to file his reply.

(Whereupon, the Court recessed at 11:55 o'clock a.m.) [3]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official (pro tempore) court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the

above-entitled cause on the date specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 24th day of September, 1956.

/s/ FERAL M. HARVEY,
Official Reporter
(Pro Tempore).

[Endorsed]: Filed September 26, 1956.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages, numbered 1 to 53, inclusive, containing the original

Complaint;

Order of Transfer Pursuant to Low-Number Rule;

Affidavit for Order Permitting Amendment of Complaint;

Order Permitting Amendment of Complaint;

Answer to Complaint;

Plaintiff's Pretrial Order;

Findings of Fact, Conclusions of Law and Judgment;

Notice of Appeal;

Order Extending Time for Filing Record on Appeal;

Designation of Contents of Record on Appeal;

Stipulation that Original Papers and Exhibit may be sent to U. S. Circuit Court of Appeals for the Ninth Circuit and Order thereon;

and a full, true and correct copy of the Minutes of the Court on

December 21, 1955;
January 23, 1956;
January 30, 1956;
February 6, 1956;
February 16, 1956;

a full, true and correct copy of Order for Pretrial Hearing;

B. 1 volume of Reporter's Official Transcript of Proceedings had on February 16, 1956;

C. Defendant's Exhibit No. A.

I further certify that my fee for preparing the foregoing record, amounting to $1.60, has been paid by appellant.

Witness my hand and the seal of said District Court this 31st day of October, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk;

/s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15,344. United States Court of Appeals for the Ninth Circuit. Tseung Chu, Also Known as Bow Quong Chew, Also Known as Tseung Bowquong Chew, Also Known as Thomas Bowquong Chew, Appellant, vs. Gordon L. Cornell, Acting Officer in Charge of United States Department of Justice, Immigration and Naturalization Service, of Los Angeles, California, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed November 1, 1956.

Docketed November 2, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

TSEUNG CHU. Also Known as BOW QUONG CHEW, Also Known as TSEUNG BOW-QUONG CHEW, Also Known as THOMAS BOWQUONG CHEW,

Appellant,

vs.

GORDON L. CORNELL, Acting Officer in Charge of United States Department of Justice, Immigration and Naturalization Service, at Los Angeles, California,

Appellee.

CONCISE STATEMENT OF POINTS UPON WHICH APPELLANT RELIES ON APPEAL

Comes now appellant Tseung Chu, also known as Bow Quong Chew, also known as Tseung Bowquong Chew. also known as Thomas Bowquong Chew, and pursuant to Rule 17, subdivision 6, of the rules of the above-entitled Court, makes and files this concise statement of the points upon which he intends to rely on appeal:

1. That the United States District Court erred in making its Finding of Fact No. IX, i.e., erred in finding that the immigration officials who acted in connection wth the deportaton proceedings relating to this appellant had jurisdiction and authority to act;

2. That the United States District Court erred in making its Finding of Fact No. X, i.e., erred in finding that there is reasonable, substantial and probative evidence to support the decision of deportability, the order of deportation and the warrant of deportation with respect to this appellant;

3. That the United States District Court erred in making its Finding of Fact No. XI, i.e., erred in finding that the deportation proceedings relating to this appellant were fair, were in accordance with law, and in accordance with appellant's constitutional rights;

4. That the United States District Court erred in making its Conclusion of Law No. II, i.e., erred in making its Conclusion of Law that the immigration officials who acted in connection with the deportation proceedings relating to this appellant had jurisdiction and authority to act;

5. That the United States District Court erred in making its Conclusion of Law No. III, i.e., erred in making its Conclusion of Law that there is reasonable, substantial and probative evidence to support the decision of deportability, the order of deportation and the warrant of deportation outstanding against this appellant;

6. That the United States District Court erred in making its Conclusion of Law No. IV, i.e., erred in making its Conclusion of Law that the deportation proceedings relating to this appellant were fair, were in accordance with law, and were in

accordance with this appellant's constitutional rights;

7. That the United States District Court erred in making its Conclusion of Law No. V, i.e., erred in making its Conclusion of Law that the crime of which this appellant was convicted, wilful attempts to evade and defeat the income tax in violation of Title 26, United States Code, Sec. 145(b), constitutes a crime involving moral turpitude within the meaning of Section 212(a)(9) of the Immigration and Nationality Act;

8. That the United States District Court erred in making its Conclusion of Law No. VI, i.e., erred in making its Conclusion of Law that this appellant was under a duty to disclose his conviction for violating Title 26, United States Code, Sec. 145(b), in his application for an immigration visa notwithstanding the fact that such conviction was upon this appellant's plea of nolo contendere;

9. That the United States District Court erred in making its Conclusion of Law No. VII, i.e., in making its Conclusion of Law that this appellant's conviction for violating Title 26, United States Code, Sec. 145(b), was a material fact which this appellant was under a duty to disclose in his application for an immigration visa;

10. That the United States District Court erred in making its Conclusion of Law No. VIII, i.e., erred in making its Conclusion of Law that the phrase, "crime involving moral turpitude," has a

sufficiently definite meaning to afford a constitutional standard for deportation, both on its face and as applied to this appellant's conviction for violation of Title 26, United States Code, Sec. 145(b);

11. That the United States District Court erred in making its Conclusion of Law No. IX, i.e., erred in making its Conclusion of Law that the order of deportation outstanding against this appellant and the warrant of deportation based thereon are valid and that this appellant is deportable pursuant to said order and warrant;

12. That the United States District Court erred in making its Conclusion of Law No. X, i.e., erred in making its Conclusion of Law that judgment should be entered in favor of defendant appellee and against this plaintiff and appellant;

13. That the United States District Court erred in not finding that there is no reasonable, substantial or probative evidence to support the decision of deportability, the order of deportation, or the warrant of deportation made with respect to this appellant;

14. That the United States District Court erred in not ruling as a matter of law that the crime of which this appellant had been convicted, i.e., wilful attempts to evade and defeat income tax, in violation of Title 26, United States Code, Sec. 145(b), does not constitute a crime involving moral turpi-

tude within the meaning of Section 212(a)(9) of the Immigration and Nationality Act;

15. That the United States District Court erred in not ruling as a matter of law that this appellant was under no duty to disclose his conviction upon his plea of nolo contendere of a violation of Title 26, United States Code, Sec. 145(b), in his application for an immigration visa;

16. That the judgment of the United States District Court is not supported by the evidence introduced;

17. That the judgment of the United States District Court is against the law and is based upon erroneous Conclusions of Law;

18. That the United States District Court erred in not giving judgment for this plaintiff and appellant as prayed for in his complaint.

Dated this 13th day of November, 1956.

/s/ FRANCIS C. WHELAN,
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 15, 1956.